

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 DELTA PILOTS ASSOCIATION,

4 Plaintiff,

5 v.

14 Civ. 225 (AKH)

6 JOHN DOE,

Conference

7 Defendant.

8 -----x
9 New York, N.Y.
10 August 14, 2014
2:40 p.m.

11 Before:

12 HON. ALVIN K. HELLERSTEIN

13 District Judge

14
15 APPEARANCES

16
17 SEHAM, SEHAM, MELTZ & PETERSEN, LLP

Attorneys for Plaintiff

18 BY: STANLEY J. SILVERSTONE

19 COHEN, WEISS AND SIMON LLP

20 Attorneys for Intervenor Airline Pilots Association
International

21 BY: MICHAEL A. ABRAM
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1 (Case called)

2 MR. SILVERSTONE: Stanley Silverstone for the
3 plaintiff.

4 MR. ABRAM: Michael Abram of Cohen Weiss and Simon for
5 the nonparty Airline Pilots Association responding to the
6 motion. With me is Mr. Art Luby as a representative of the
7 client.

8 THE COURT: Thank you. Be seated. Mr. Silverstein, I
9 need you to speak as loudly as Mr. Abram speaks.

10 MR. SILVERSTONE: I will, your Honor.

11 THE COURT: I intend to go over the three or four
12 different issues that the motion poses but then to ask where
13 are we going with this whole case. Let's do the specific
14 things first.

15 Delta Pilots Association asks for responsive documents
16 that contain, describe, or reference any facts learned or
17 information generated in any investigation by ALPA or the ALPA
18 Delta --

19 MR. ABRAM: MEC, your Honor.

20 THE COURT: What does that mean?

21 MR. ABRAM: Master executive council. That's the
22 local governing body.

23 THE COURT: Mr. Abram, why won't you give that?

24 MR. ABRAM: Your Honor, what they want is not related
25 to the purpose of the order that the Court granted, which was

1 to enable them to identify the so-called John Doe.

2 THE COURT: You said you have read it and there is no
3 reference. It is understandable why they don't trust that.

4 MR. ABRAM: Your Honor, if they could simply serve a
5 subpoena on a nonparty and say show us any documents that touch
6 on anything having to do with this subject so that they could
7 decide what to do about it, that is far beyond the narrow
8 discovery that the Court ordered.

9 THE COURT: Did your client investigate the issue that
10 is at the heart of this lawsuit?

11 MR. ABRAM: They investigated to the extent they could
12 whether there was a so-called hacker or person who had
13 redirected, which is really what happened here --

14 THE COURT: Mr. Silverstone, if I order Mr. Abram to
15 give that to you, how can Mr. Abram be assured that you can
16 confine your inquiry to the relevant fact of the purpose of the
17 investigation in relationship to the John Doe?

18 MR. SILVERSTONE: The relevant fact for us, your
19 Honor, is to identify who is responsible for the hacking.

20 THE COURT: But you are looking at an investigative
21 report that could touch on a lot of other things.

22 MR. SILVERSTONE: It could, your Honor, and we don't
23 know without seeing those documents. All we do know is that
24 ALPA apparently investigated the exact same incident that we
25 are investigating to get the exact same information that we are

1 trying to get.

2 THE COURT: If I looked at it, would you trust me?

3 MR. SILVERSTONE: I would, your Honor.

4 THE COURT: Mr. Abram, would your --

5 MR. SILVERSTONE: With one proviso, your Honor. The
6 information may have technical information in it that requires
7 to be seen by an expert.

8 THE COURT: What kind of expert?

9 MR. SILVERSTONE: A forensic computer expert, someone
10 who knows how all this stuff works more than we do.

11 THE COURT: Do you trust me, Mr. Abram?

12 MR. ABRAM: I do trust you, your Honor. I would want
13 to be sure exactly what we are talking about. We can provide
14 to the Court the report that ALPA's IT people made to the Delta
15 MEC at the time.

16 THE COURT: Why don't we go off the record. You
17 whisper into Mr. Silverstone's hear what it is that you would
18 offer to produce, and if he is satisfied, that's what I will
19 look at.

20 (Discussion off the record)

21 THE COURT: What is it that you will give me?

22 MR. ABRAM: Your Honor, we would provide for your
23 review the report that was made by the ALPA IT people to the
24 Delta MEC in November of 2013, when they learned about this
25 alleged incident.

1 THE COURT: You wouldn't have it with you now?

2 MR. ABRAM: I would have that with me, your Honor.

3 THE COURT: I'll look at it right now.

4 MR. ABRAM: I'm handing up to the Court a two-page
5 document.

6 THE COURT: Is this the entire report?

7 MR. ABRAM: That is the entire report made to the
8 Delta MEC that has been provided to me.

9 THE COURT: Page 1 is a report of the investigation.
10 Page 2 is a listing of various searches that seem to have been
11 made. I wonder, Mr. Abram, if you couldn't let Mr. Silverstone
12 see this. It doesn't seem to me that there is anything of any
13 sensitive nature in here.

14 MR. ABRAM: Yes, your Honor, I'll be happy to share
15 this with Mr. Silverstone on the basis that we are doing this
16 as requested.

17 THE COURT: It's not a waiver of anything else.

18 MR. ABRAM: Thank you, your Honor.

19 THE COURT: To my untrained eye, Mr. Silverstone, the
20 only thing of relevance is the reference to a Web name. That
21 leads into the second request for all responsive documents that
22 identify the private individual referenced in the publication
23 of the pilots association. What protection do you think would
24 be appropriate, Mr. Abram?

25 MR. ABRAM: Your Honor, what we proposed in our

1 proposed order is that with respect to that individual's name,
2 the plaintiff could not disclose that name or his email address
3 or other identification. If they wished to, after
4 investigating on their own whatever relationship they believe
5 he has to the incident, if they believe he is somebody who
6 hacked their site, which he says he was not, but if they
7 believe that he was and they can support that enough to name
8 him in their lawsuit, then we ask that they ask the Court first
9 for permission to name him.

10 THE COURT: In other words, if his identity is
11 learned, the next appropriate step would be for Mr. Silverstone
12 to move to amend under rule 21 to add a party and drop a party,
13 add the individual and drop John Doe, and at that time if I
14 grant the motion, the name could be public?

15 MR. ABRAM: That's correct, your Honor.

16 THE COURT: Not before?

17 MR. ABRAM: That's correct, your Honor.

18 THE COURT: How about that, Mr. Silverstone?

19 MR. SILVERSTONE: If we were provided with the
20 identity of the individual and we could share that --

21 THE COURT: It would be for --

22 MR. SILVERSTONE: For our use alone.

23 THE COURT: -- your use alone. Do you need to share
24 it with your client?

25 MR. SILVERSTONE: I think we would need to share it

1 with our client because he may have additional information that
2 we don't have.

3 THE COURT: How many people and your client?

4 MR. SILVERSTONE: It is really just one, your Honor.

5 THE COURT: What is the name of that person?

6 MR. SILVERSTONE: That's Tim Caplinger, who is the
7 interim president of DPA.

8 THE COURT: That is the guy who is named in this?

9 MR. SILVERSTONE: Yes. His name comes up, that's
10 true, in the ALPA report.

11 THE COURT: I think we have agreement. You can see
12 the name. Mr. Abram will give it to you. Not on the record,
13 but he will give it to you, write it on a piece of paper and
14 give it to you. You will honor the confidentiality. You and
15 Mr. Caplinger will honor the confidentiality until such time as
16 I grant you permission to change the name of the caption or
17 there is a stipulation to that effect, which I shouldn't think
18 would be withheld. Until then, you keep it quiet. All right,
19 agreed?

20 MR. SILVERSTONE: It's agreed, your Honor. The only
21 other request I would make is whether we can have a copy of at
22 the very least the header of the email that came with the
23 author's statement so that we can authenticate that the
24 statement was written by the person who they are --

25 THE COURT: I think that is reasonable, Mr. Abram.

1 MR. ABRAM: Let me show right now Mr. Silverstone that
2 header.

3 THE COURT: The record will show that Mr. Abram is
4 showing a header in a document to Mr. Silverstone.

5 MR. SILVERSTONE: I wouldn't mind having a copy of
6 that.

7 THE COURT: What do you need a copy for?

8 MR. SILVERSTONE: Or I would like to write down the
9 email address.

10 THE COURT: Write it down.

11 MR. ABRAM: We will write it for you.

12 MR. SILVERSTONE: Thank you, your Honor.

13 THE COURT: Write it down now.

14 The third request is for all responsive documents that
15 identify the third party referenced in a certain ALPA
16 publication dated May 21, 2014. That publication has to do
17 with a request by a certain Delta pilot for legal advice of the
18 general counsel of Delta. Why do you need it?

19 MR. ABRAM: Before he answers that, I think that is
20 the same individual, your Honor.

21 MR. SILVERSTONE: Assuming it is the same individual,
22 then that is not in dispute.

23 MR. ABRAM: Same individual.

24 THE COURT: So we solved all the problems. The motion
25 to compel is granted to the extent allowed on the record of

1 this session.

2 Mr. Silverstone, where are we going with this case?

3 MR. SILVERSTONE: Your Honor, since we started
4 discovery back in January, we've accomplished a lot. We have
5 served at least half a dozen different subpoenas on Internet
6 service providers and telephone companies.

7 THE COURT: I know it's a lot of activity that you
8 have done. What more do you need?

9 MR. SILVERSTONE: We probably need a little bit more
10 time to make a decision as to whether we have enough
11 information to make one of these potential individuals a
12 defendant.

13 THE COURT: Let's say you have. What then? What
14 happens if you make out a technical violation of the statute?

15 MR. SILVERSTONE: I think it is up to the client to
16 decide whether he wants to proceed.

17 THE COURT: Let's say he proceeds. What does he get?
18 What could he recover?

19 MR. SILVERSTONE: He could recover damages for the
20 cost of the investigation and any damages he could prove that
21 may have been caused to the organization.

22 THE COURT: Let's say he can't prove damages and all
23 you have is legal expense.

24 MR. SILVERSTONE: Right, and expert fees. There will
25 be some damages for not only the investigative aspect but the

repair work that was done to get the website back up online.

THE COURT: What are you talking? \$2500?

MR. SILVERSTONE: I think it is a lot more than that, your Honor.

THE COURT: \$5,000?

MR. SILVERSTONE: I think DPA would also argue that during the time that the website was misdirected there were donations and --

THE COURT: Speculative.

MR. SILVERSTONE: It may be speculative, but that is the position of DPA.

THE COURT: Off the record.

(Discussion off the record)

(Recess)

THE COURT: Counsel report to me that the settlement I outlined merely as a suggestion, not on any informed basis, would not be acceptable at this time. Perhaps with more discussion it might be, but it is not now acceptable.

This case will proceed in normal fashion. The next step will be a motion to amend the caption. When will that occur, Mr. Silverstein?

MR. SILVERSTONE: I believe, your Honor, we are going to need at least 30 days. We have some outstanding subpoenas that have not been responded to.

THE COURT: I'm not sure you are going to do very well

1 with subpoena practice. It seems to me that you are using this
2 case as a fishing expedition for a lot of other information
3 that is intended as relevant not to this case but for other
4 purposes in your jurisdictional dispute. I want you to know
5 that this Court will not lend itself to that practice.

6 MR. SILVERSTONE: Your Honor, I respectfully disagree
7 with that. We have only conducted this litigation for the sole
8 purpose of finding out who is at the bottom of this hacking
9 incident.

10 THE COURT: I heard what you said. I gave you the
11 discovery that you have asked for. You now know the name of
12 the person who was involved. If you want to take that person's
13 deposition to see if anyone else was involved, you can do so.
14 But I don't see any room for bothering other people with
15 subpoenas.

16 MR. SILVERSTONE: As I said, there is a subpoena
17 outstanding to the web hosting company. The subpoena was
18 written by our computer expert.

19 THE COURT: Is there a motion to quash, Mr. Abram?

20 MR. ABRAM: Your Honor, I'm not aware of any other
21 motion practice in the case. We have just responded to the
22 motion with respect to ALPA.

23 THE COURT: If they give discovery voluntarily, of
24 course, they can give it. If you ask me, I don't see that it
25 is relevant, at least not until you take the deposition of the

1 individual.

2 MR. SILVERSTONE: We will do that, your Honor.

3 THE COURT: Let your client know what I said before.

4 You have to show me what is relevant. At this point in time it
5 seems to me you have everything and you are prolonging the case
6 simply for other purposes. I'm not saying that is a finding.
7 It is not a finding. It is an observation.

8 We have a date in September. There is no need to
9 accelerate at this point in time. I do want to have a fixed
10 date. When does your case management plan say you have to make
11 a motion.

12 MR. SILVERSTONE: We don't have a plan yet, your
13 Honor. I think we were supposed to do that at the September
14 5th conference.

15 THE COURT: OK. On September 5 have in mind that the
16 date for making this motion will be very close to September 5.
17 Thank you. Anything else?

18 MR. ABRAM: Not from us, your Honor. Thank you.

19 THE COURT: Mr. Silverstone?

20 MR. SILVERSTONE: Not from us, your Honor. Thank you.

21 (Adjourned)